



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 29, 1991

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Review of Wyoming Definition of "Release"

FROM: Sammy Ng, chief
Regulatory Analysis Branch

TO: Debbie Ehlert
UST Program Manager, Region 8

Maureen Doughtie of your staff recently sent us a copy of Wyoming's UST statute. she requested our opinion on the definition of "release" as it appears in Wyoming's statute, particularly as it applies to State financial assurance fund coverage and acceptability as a compliance mechanism under the Federal financial responsibility (FR) regulations. We have reviewed the definition in this Context, as well as its implications for State Program Approval stringency.

The Wyoming statute defines the term "release" as:
"...any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water or subsurface soils in amounts exceeding twenty-five (25 gallons" (emphasis added).

The question is whether Wyoming can exclude releases under 25 gallons from its regulatory program and still qualify for State Program Approval or approval of its State fund as a FR compliance mechanism. We believe that their definition may be acceptable in the context of State fund approval, but not for State Program Approval. The rationale for each of these opinions is discussed below.

State Program Approval

The Federal definition of release (Part 280.12) is identical to Wyoming's except for the 25 gallon exclusion in Wyoming's statute. Although we established reporting triggers at the 25 gallon level for aboveground releases, Subpart E of EPA's UST regulations requires that spills or overfills of any size must be

immediately contained and cleaned up, and, if not then it must be reported to the implementing agency. Thus, while reporting is not required for small spills (< 25 gallons), UST owners and operators who experience them are regulated under Subtitle I and must take appropriate action under Subpart E -- Release Reporting, investigation and confirmation.

The State Program Approval regulations and objectives do not appear to provide any relief in this case. Part 281.34 says:

"In order to be considered no less stringent ... the state must have requirements that ensure all owners and operators conform with following:

- (a) promptly investigate all suspected releases;
- (b) Ensure that all owners and operators contain and clean up unreported spills and overfills ..."

Based on this discussion, we believe that Wyoming's definition of release would be less stringent than the Federal program allows.

State Fund Approval for FR

EPA's financial responsibility rules require UST owners or operators to demonstrate FR for taking corrective action and for third party liability. We allow States to submit their assurance funds to EPA for approval as full or partial coverage mechanisms to satisfy this requirement. The issue we face with Wyoming's definition of release is whether the State fund has to cover releases less than 25 gallons in order to be approved. Specifically, the question to be answered is whether EPA's requirement to respond to releases less than 25 gallons is defined as "corrective action."

In order to provide "corrective action" coverage, a State fund needs to cover, at a minimum, those activities required on the part of owners or operators under Subpart F of EPA'S UST rules. Although EPA has never formally defined the term "corrective action" in our rules, Subpart F -- Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances -- is generally viewed as the "corrective action" section of the rules. This viewpoint is supported by other parts of the technical standards and preamble, which repeatedly make reference to "... begin corrective action in accordance with Subpart F." Thus, it can be argued that until an owner is forced into the subpart F section of the rules, he is not performing corrective action, per se.

Since the requirement to respond immediately to releases less than 25 gallons is found in Subpart E of the UST rules --Release

Reporting, Investigation, and Confirmation -- it can be reasonably argued that the state fund is not obligated to cover these activities, because they are not required to be performed under Subpart F. Thus, we believe that Wyoming's fund does not have to cover releases less than 25 gallons in order to be approved as an FR compliance mechanism (provided that it meets all other State fund review criteria).

Given the nature of the issue you presented and our belief that other Regions may be interested in the response, as it relates both to State Program Approval and State fund approval, we are sending copies to them for their information. If you have any questions regarding the above, or wish to discuss these issues further, please call John Heffelfinger at FTS 382-2199.

cc: UST Program Managers, Regions 1-7, 9-10
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Mike Williams
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